

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF DETERMINING

Whether there has been a violation
of the Business Opportunity Fraud Act of the
State of Washington by:

Espresso Italia Marketing, Inc.; Shadd Vickery;
Robert Ashcroft; Whitney Banks; their agents and
employees,

Respondents.

S-02-328-02-FO01

ENTRY OF FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND FINAL ORDER
TO CEASE AND DESIST AND REVOKING
REGISTRATION

Case No. S-02-328

THE STATE OF WASHINGTON TO:

Espresso Italia Marketing, Inc.
Shadd Vickery, President
1301 North Congress Avenue, Suite 410
Boynton Beach, Florida 33426

On October 28, 2002, the Securities Administrator of the State of Washington issued Summary Order to Cease and Desist SDO-86-02 hereinafter referred to as "Summary Order."

The Summary Order, together with a Notice of Opportunity to Defend and Opportunity for Hearing (hereinafter referred to as "Notice of Opportunity for Hearing") and an Application for Adjudicative Hearing (hereinafter referred to as "Application for Hearing") thereon, were served via certified mail on Respondents November 4, 2002. The Notice of Opportunity for Hearing advised Respondents that they had twenty days from the date they received the notice to file a written application for an administrative hearing on the Summary Order. Respondents, Espresso Italia Marketing, Inc., Shadd Vickery, Robert Ashcroft,

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Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1 and Whitney Banks, each failed to request a hearing within 20 days. The Securities Administrator
2 therefore adopts as final the findings of fact and conclusions of law as set forth in the Summary Order to
3 Cease and Desist.

4 **FINDINGS OF FACT**

5 I. Respondents

6 1. Espresso Italia Marketing, Inc. ("Espresso Italia") is a corporation with a principal
7 place of business at 1301 North Congress Avenue, Suite 410, Boynton Beach, Florida 33426.
8 Espresso Italia is in the business of selling an investment in espresso coffee equipment coupled with
9 location services.

10 2. Shadd Vickery ("Vickery") was the President of Espresso Italia at all times relevant
11 to the matters set forth herein.

12 3. Robert Ashcroft ("Ashcroft") was the Managing Director of Espresso Italia at all
13 times relevant to the matters set forth herein.

14 4. Whitney Banks ("Banks") was a salesperson for Espresso Italia at all times relevant
15 to the matters set forth herein.

16 II. Registration Status

17 5. Until October 28, 2002 Espresso Italia was registered to sell its business opportunities in
18 the state of Washington. Espresso Italia filed for a license to offer and sell their business opportunity
19 in the State of Washington on September 5, 2001. File number 70011948 was approved and Espresso
20 Italia was registered from September 6, 2001 until September 6, 2002, with a renewal extending their
21 registration until September 6, 2003. On October 28, 2002, the Securities Division temporarily
22 suspended this registration due to the issuance of Order number SDO-86-02.

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III. Nature of the Offering

6. In June 2002, Espresso Italia placed the following advertisement in at least one Washington newspaper:

COFFEE DISTRIBUTOR
High profit potential, short hrs.
Low overhead. Company training.
Pre-set accounts. Call now!
** 1-800-899-4503**

7. On June 18, 2002 a Washington resident contacted Espresso Italia and requested information. Later that day, Banks contacted the Washington resident via telephone. Banks offered to sell to the Washington resident an investment in self-contained espresso machines that would be located on behalf of the purchaser by Espresso Italia.

8. Respondents, acting in concert and on behalf of one another, represented to the Washington resident that a purchaser would only be required to service the accounts in his area, and would not be required to sell anything. Further, the purchaser would not have to find any locations because Espresso Italia had an in-house locator service.

9. Banks told the Washington resident that Espresso Italia was offering 10 accounts for \$19,995. Each account consisted of a machine and a location. He described how each account could produce \$2,500 per year in income to the purchaser.

10. The Washington resident was told that a refundable fee of \$500 would secure a market area. Further, when the Washington resident requested information in writing, Banks explained that there was a charge of \$12.50 for overnight shipping and handling. The Washington resident charged the shipping and handling fee to his credit card. Ashcroft contacted the Washington resident later in

1 the day to confirm the name and address on the request and to inquire if the Washington resident
2 wanted to pay the \$500 to secure an area.

3 11. On June 20, 2002 the Washington resident received a package of information from
4 Espresso Italia. The package contained a "Distributor Packet", which in turn, contained several color
5 brochures. These brochures described the equipment and the distributor program. The packet also
6 contained a Purchase Order Agreement and a document entitled "Information for Prospective Business
7 Opportunity Purchasers Required by the Federal Trade Commission." This document failed to
8 disclose material information regarding the business opportunity, including, but not limited to:

- 9 i. The disclosure document failed to state "Do not sign this contract if any spaces for
10 agreed terms are blank. Do not sign this contract unless you receive a written
11 disclosure. You are entitled to a copy of this contract an the time you sign it."
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13 ii. The disclosure document failed to notify the prospective purchaser that he has
14 seven days to cancel the contract for any reason.
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16 iii. The disclosure document failed to provide written evidence that would substantiate
17 the oral earnings claims made by Banks.
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19 iv. Espresso Italia failed to provide the Washington resident with all material
20 information on the financial status of the company, including, but not limited to a
21 financial statement dated within 3 months of delivery.

22 12. On June 24, 2002 the Federal Trade Commission filed a civil action in United States
23 District Court Southern District of Florida. Espresso Italia failed to amend its business opportunity
24 registration application with the State of Washington disclosing this fact.

13. Espresso Italia failed to file the advertisements and marketing materials with the Securities Division seven days prior to publication to the Washington resident.

Based upon the above Findings of Fact, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

1. The offer and/or sale of espresso machine investment, as described above, constitutes the offer and/or sale of a business opportunity as defined in RCW 19.110.020(1).

2. The offer and/or sale of said business opportunity was made in violation of RCW 19.110.050, the registration provision of the Business Opportunity Fraud Act.

3. The offer and/or sale of said business opportunity was made in violation of RCW 19.110.070 and RCW 19.110.120, the disclosure document and antifraud provisions of the Business Opportunity Fraud Act, respectively.

FINAL ORDER

Based on the foregoing, NOW, THEREFORE, IT IS HEREBY ORDERED that Respondents, Espresso Italia Marketing, Inc., Shadd Vickery, Robert Ashcroft, Whitney Banks, its owners, principals, officers, agents and employees, each cease and desist from offering and/or selling business opportunities in any manner in violation of RCW 19.110.050(1), the section of the Business Opportunity Fraud Act requiring registration.

It is further ORDERED That, Espresso Italia Marketing, Inc., Shadd Vickery, Robert Ashcroft, Whitney Banks, its owners, principals, officers, agents and employees, each cease and desist from offering and/or selling business opportunities in any manner in violation of RCW 19.110 070 and

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1 RCW 19.110.120, the disclosure document and the anti-fraud provisions of the Business Opportunity
2 Fraud Act, respectively.

3 It is further ORDERED that the Business Opportunity registration, file number 70011948, filed
4 by Espresso Italia Marketing, Inc. is revoked.

5 This order is issued pursuant to RCW 19.110.150 and is subject to the provisions of Chapter
6 34.05 RCW.

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8 WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

9 DATED this 16th day of December 2002.
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DEBORAH R. BORTNER
14 Securities Administrator

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16 Presented by:

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Susan H. Anderson
20 Financial Legal Examiner

21 Approved by:

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Michael E. Stevenson
24 Chief of Compliance

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